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Live Music during Thaipusam Processions in Singapore: Developments in the Law on Freedom of Religion

Benjamin Joshua Ong 17th November 2016

Religion

In Singapore, due to the 2009 **Public Order Act**, public processions require an official permit, which may have conditions attached. In *Vijaya Kumar s/o Rajendran v Attorney-General* (17 September 2015), three applicants, citing their **constitutional rights** to freedom of religion and equality before the law, challenged such a condition which prohibited the use of musical instruments (other than at certain fixed points) during the annual procession for the Hindu festival of Thaipusam.

The High Court (the lower division of Singapore's Supreme Court) heard and dismissed the application at first instance on the grounds that the public order proviso to freedom of religion was made out, and the differential treatment was justified by a reasonable nexus to the objective of public order. The applicants withdrew their appeal. The judgment may have important ramifications for freedom of religion in Singapore for the following reasons.

First, the Court implicitly accepted that the Constitution covers not just freedom of religious *thought*, but also *particular* religious *actions* (e.g. the procession itself, and the act of playing live music in particular). This stands in sharp contrast to a **previous decision** that a restriction on freedom of religion was not unconstitutional because it merely restricted the "manner" of religious practice rather than religious practice itself.

Second, the Court declined to **inquire searchingly into the content of the religious beliefs** (as in past Malaysian and Indian cases). Instead, the Court only asked whether the applicants "firmly believed that the playing of musical instruments is essential to the Thaipusam procession". While the applicants produced a foreign religious expert's report to try to show authoritatively that live music *is* crucial to Thaipusam, what the court took from the report was that *some* followers (including the expert) *believed* that it was. This approach, centring on the devotees' subjective beliefs rather than an expert's credentials or reasoning process, is unlike the approach of other jurisdictions that **look to religious leaders' authoritative statements of doctrine**.

Third, the Court rejected possible approaches adopted in England and Wales that would have required that the religious practices in question be widespread, **compulsory**, or **exceptionally important** to the religion. Instead, the threshold was low: as the applicants' beliefs were firmly held and not "totally foreign to the religion", it did not matter that there were just four proven believers in the practice in question (the three applicants and the expert). Neither did the Court take a parochial approach: it explicitly accepted that "[r]eligious practices and rituals do vary from place to place and among different groups of believers in the same faith", and accepted evidence from the *foreign* expert. Thus, the Court balanced the need to prevent the freedom of religion from becoming a charter for "charlatan[s] pretending to profess a certain religion for ulterior purposes" with the need for sensitivity to diversity of beliefs and practices among religious groups and sub-groups, even small ones.

Fourth, the Court hinted at a turn away from the previously expressed view that proportionality is a European import and not part of Singapore's law. Rather than merely asking whether public order concerns *existed*, the Court reasoned that public order had been taken into account in a “nuanced” and “calibrated” manner while giving “due regard” to the applicants’ rights.

The importance of the Court’s judgment is best appreciated in its wider context. In its balancing exercise, the Court noted that the police had always been in “dialogue with the Hindu community” and hence had gradually relaxed the restrictions over time, from banning music over time, to allowing singing and then electric speakers. Thus, even as it dismissed the application, the Court tacitly suggested that litigation is not the only means of resolving constitutional disputes. This is seen in the aftermath of the case: the applicants withdrew their appeal against the Court’s decision after the police, following more such dialogue, agreed to allow live music at the next Thaipusam procession.

The judgment in *Vijaya Kumar* is to be commended for recognising the subtleties inherent in the nature of religion and the freedom of religion. It would have been ideal if these had been made more explicit, and it remains to be seen what Singaporean courts will make of them in future.